IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6375 OF 2005

The Godavari Sugar Mills Ltd. ...Petitioner

Versus

State of Maharashtra & Ors ..Respondents

Mr. N.H.Seervai, Senior Advocate with Mr. N. Dilla i/b.. M/s.Hariani & Co., for the petitioners
Mrs. S.S.Bende, AGP for respondents.

CORAM: F.I. REBELLO &
DR.D.Y. CHANDRACHUD, JJ.
DATE : 4TH OCTOBER, 2005

P.C.:

. This petition proceeds on the basis of an order of this Court passed in Writ Petition No.83 of 1986 in the case of **Krishnamukar s/o.Vithalrao Jamadar vs. State of** Mahar**ashtra & Anr.** by a Single Judge of this Court at Nagpur and another Judgement of a Division Bench of this Court in the case of **Shree Changdeo Sugar Mills Limited & Anr. vs. State of Maharashtra & Ors. in Writ Petition No.3805 of 2000** decided on 7th August, 2000. The prayer sought in the present petition is to declare the notice dated 30th March, 2005 addressed by the respondent No.3 as illegal, null and void. By the said notice the petitioners were informed that the lands belonging to the petitioner were taken in the years 1968, 1976 and 1990 under the provisions of the Maharashtra Agricultural Lands Ceiling Act, 1961. Subsequent to that the petitioners have received a sum of Rs.88,66,518/- as

compensation. While receiving the said amount there is a note put up by the petitioners that the amount is accepted on account and without prejudice and under protest. It is not the case of the petitioners that the sum so paid is not in terms of the provisions of the Act. The entire argument is that because the amount was not paid on time the petitioners were entitled to additional interest as has been ordered to be paid by this Court in Shree Changdeo Sugar Mills Ltd. (supra).

2. The learned Counsel for the petitioners was asked whether there is any statutory provision under the Act, which, in the event the compensation is not paid within a reasonable time, enjoins upon the respondents a duty to pay interest, or confers any right on the petitioner. Learned Counsel states that there is no such provision, but they are basing their claim on the judgment of this Court as aforestated. Reliance is placed in the case of **Salonah Tea Co. Ltd. & Ors. vs. Superintendent of Taxes, Nowgong &Ors., (1988) SCC 401** to contend that the petition for recovery of moneys is maintainable and party should not be asked to avail of any alternate remedy. In that case the issue in the petition was refund of tax paid under mistake of law by assessee and illegally and unauthorizedly collected. Next reliance is placed on the judgment in the case of **Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. State of Bihar and Ors., (1996) 6 SCC**

86. That also was a case of refund of tax which was collected illegally. On the facts of that case as can be noted from paragraphs 9 and 10 of the Judgment the Apex Court held that the High Court should have entertained the petition. Lastly reliance is placed on the judgment, in the case of **ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. &Ors., (2004) 3 S.C.C.553** to contend that the petition for recovery of money simplicitor is maintainable. The Apex Court therein in para.27 has laid down the following principles for maintainability of a writ petition, which may be set out as under:-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

. It would, therefore, be clear from the said judgment that a writ petition involving a consequential relief of

monetary claim is maintainable.

. The Apex Court in the case of **Suganmal vs. State of M.P. AIR 1965 SC 1740** has clearly set out that a petition merely for recovery of money by itself would not be maintainable. In so far as the judgment of this Court in Shree Changdeo Sugar Mills Ltd. (supra) it would be clear show that the petitioner had come to the Court on the ground that the statutory compensation payable to them had not been paid. In that context and on the facts of that case while directing payment of statutory compensation the Court ordered payment of interest though there is no statutory provision of interest other than at the rate of 3% which in the present case has been paid. The relief also was granted as a consequential relief. The same was the position in so far as the learned single Judge of this Court in the case of Krishnamukar (supra).

. The position of law about maintainability of a petition for pursuing recovery of money has now been reiterated by the Apex Court in the case of **Mrs. Sanjana M.W.S. vs. Hindustan Petroleum Corporation Ltd., 2005 AIR SCW 4530.** The Apex Court has made a distinction in cases where a claim for money is sought as a consequential relief and in cases where the relief is for money only. Only in the first set of cases the Courts have exercised their extra

ordinary jurisdiction, in the second type of cases the Courts have refused to exercise jurisdiction as Civil Suit is available to the petitioners.

. In the instant case the statutory compensation which was payable has been paid and has been received by the petitioners may be under protest. What is now sought is purely interest on the ground that the compensation was not paid within time. In the terms of the Act 20, years bonds had to be issued which were to carry interest at 3%. The first acquisition was of the year 1968. The second acquisition was in 1976 and the third acquisition was in the year 1990. Compensation in terms of the statutory provisions including 3% interest has been paid. Considering the above we do not think this is a fit case where this Court should exercise its extra ordinary jurisdiction. It will be open to the petitioner to seek such other remedy in law which they are entitled to.

. Merely because the petitioner has prayed as a relief for a declaration as set out in prayer (c) and a writ of certiorari to quash the order dated 30th March, 2005, will not convert the petition into petition wherein the relief for money is purely consequential. The money statutorily due had been paid before the petition was filed. The only relief which this Court can consider is the grant of interest, which is not payable under the Act based on which the land was

acquired.

. Petition stands disposed of accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)